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Attorneys for Defendants Harold David Story, Inc, Matthew Ryan McCraw and Matthew Ray Bramblett

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

WAYNE E. TOUVE and NORMA
TOUVE, husband and wife,

Plaintiffs,

v.

HAROLD DAVID STORY, INC., a
Georgian Corporation, dba Cedar
Creek; MATTHEW RYAN MCCRAW, an
individual; and, MATTHEW RAY
BRAMBLETT, an individual,

Defendants.

Case No.: 2:19-cv-01922-SU

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES

JURY TRIAL DEMANDED

COMES NOW Defendants Harold David Story, Inc., doing business as Cedar Creek, Matthew Ryan McCraw, and Matthew Ray Bramblett, by and through their attorneys of record, Katie D. Buxman and CJ Martin of Maloney Lauersdorf Reiner, P.C., and hereby admit, deny, and allege the following in response to Plaintiffs' complaint.

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DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Page 1

1.

Defendants lack sufficient information to admit or deny Plaintiffs' paragraph 1, but admit it upon information and belief.

2.

Defendants admit Plaintiffs' paragraphs 2, and 3.

3.

Defendant denies Plaintiff's paragraph 4.

4.

In response to Plaintiffs' paragraph 5, defendants admit that events relevant to the Complaint occurred in Union County, Oregon, but deny the remaining allegations of Plaintiff's paragraph 5.

5.

Defendants admit Plaintiffs' paragraphs 6, 7, 8, 9, and 10.

6.

In response to Plaintiffs' paragraph 11, Defendants admit that Matthew Ryan McCraw was operating the vehicle in the course and scope of his employment with Defendant Harold David Story, Inc. Defendants admit Matthew Ray Bramblett was in the course and scope of his employment, but deny he was operating the vehicle at the relevant times. Unless specifically admitted herein, Defendants deny the remaining allegations of Plaintiffs' paragraph 11.

7.

In response to Plaintiffs' paragraph 12, Defendants admit that at all material times Defendant Harold David Story, Inc., was acting by and through its employees and is responsible for the acts of those employees pursuant to *respondeat superior*. Defendants deny that there was negligent entrustment,
DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Page 2

negligent hiring, or other similar theories, and deny the remaining allegations of Plaintiff's paragraph 12.

8.

Plaintiffs' paragraph 13 makes no allegations of fact, and therefore does not require a response. To the extent a response is required, Defendants deny Plaintiff's paragraph 13.

9.

Defendants admit Plaintiffs' paragraph 14.

10.

In response to Plaintiffs' paragraph 15, Defendants admit that Matthew Ryan McCraw was driving a semi-truck eastbound on I-84 on or about October 20, 2017 and that the vehicle defendant McCraw was driving came into contact with Plaintiff Wayne E. Touve's vehicle. Defendants deny the remaining allegations of Plaintiffs' paragraph 15.

11.

Defendants deny Plaintiffs' paragraphs 16, 17, 18, 19, 20, 21, 22, 23, and 24.

12.

In response to Plaintiffs' paragraph 25, Defendants admit and deny as admitted and denied in paragraphs 1 through 10 above.

13.

Defendants deny Plaintiffs' paragraph 26.

14.

In response to Plaintiffs' paragraph 27, Defendants admit that the tractor trailer driven by Matthew Ryan McCraw was driven with the permission and at the direction of Defendant Harold David Story, Inc. Defendants deny the DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Page 3

remaining allegations of Plaintiffs' paragraph 27.

15.

In response to Plaintiffs' paragraph 28, Defendants admit that the tractor trailer driven by Defendant Matthew Ryan McCraw was driven in the course and scope of his employment with Defendant Harold David Story, Inc. Defendants deny the remaining allegations of Plaintiffs' paragraph 28.

16.

In response to Plaintiffs' paragraph 29, Defendants admit that Defendant Harold David Story, Inc. was the owner of the vehicle at issue marked with US DOT Number 1060323 displayed on the tractor involved in Plaintiffs' Complaints. Defendants deny the remaining allegations of Plaintiffs' paragraph 29.

17.

Defendants deny Plaintiffs' paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40.

18.

Defendants deny Plaintiffs' paragraphs 41, 42, 43, 44, 45, and 46.

19.

In response to Plaintiffs' paragraph 47, Defendants agree to a trial by jury.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Contributory Negligence)

20.

Plaintiffs' injuries were caused or contributed to by the negligence of Plaintiff Wayne E. Touve. Plaintiff Wayne Touve was negligent in one or more DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Page 4

of the following ways:

- (a) Failure to use the warning lights on his vehicle to warn approaching vehicles that he was traveling at an unusually slow speed;
- (b) Traveling at an unusually and unexpectedly slow speed on the highway; and
- (c) In other ways as may be revealed by discovery.

21.

Plaintiff Wayne Touve's fault should be compared with Defendants' fault, if any, pursuant to ORS 31.600 and Plaintiffs' damages, if any, should be reduced based on his share of fault.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

21.

Plaintiff Wayne Touve failed to mitigate his damages through appropriate treatment and care.

THIRD AFFIRMATIVE DEFENSE

(Lack of Proper Service)

22.

Plaintiff failed to properly serve an accurate summons on Defendant Harold David Story, Inc., and therefore the court does not have personal jurisdiction over Defendant Harold David Story, Inc.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

23.

Plaintiffs failed to serve a proper summons on Defendant Harold David Story, Inc., within the time authorized by statute, and therefore has failed to
DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

commence the action within the time allowed by statute.

FIFTH AFFIRMATIVE DEFENSE

(Offset)

24.

Defendants are entitled to an offset from any damages awarded to Plaintiffs for payments made to or on behalf of Plaintiff by a third party, such as a worker's compensation insurer, or by Defendant.

25.

Defendants reserve the right to amend this Answer to add appropriate affirmative defenses based on discovery.

WHEREFORE, Defendants pray for relief as follows:

1. That Plaintiffs take nothing and that their claims be dismissed with prejudice;
2. That Defendants recover their costs and disbursements incurred herein; and
3. Any further relief the Court deems just and equitable.

DATED this 2nd day of December, 2019.

MALONEY LAUERSDORF REINER, PC

/s/ *Katie D. Buxman*

By: _____
Katie D. Buxman, OSBA #061452
Email: kb@mlrlegalteam.com
CJ Martin, OSBA #106141
Email: cjm@mlrlegalteam.com
Of Attorneys for Defendants

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

Page 6

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES on:

Peter J. Hess
Hess Law Office
415 N. 2nd Ave.,
Walla Walla, WA 99362
peter@hesslawoffice.com / ryan@hesslawoffice.com
Of Attorneys for Plaintiff

by the following indicated method or methods:

by mailing a copy thereof, placed in a sealed envelope addressed as listed above and deposited in the United States mail at Portland, Oregon, and that postage thereon was fully prepaid.

by electronic service through the court's eFiling system. Service was accomplished at the party's email address as recorded on the date of service in the eFiling system.

by facsimile transmission to the fax number shown above.

by email transmission to the email address shown above.

by hand delivering a copy thereof, to the address listed above.

DATED this 2nd day of December, 2019.

MALONEY LAUERSDORF REINER, PC

/s/ Katie D. Buxman

By: _____
Katie D. Buxman, OSBA #061452
CJ Martin, OSBA #106141
Of Attorneys for Defendants

PAGE 1 – CERTIFICATE OF SERVICE

